

REMARKS/ARGUMENTS

Claims 1-20 have been pending in the application and stand rejected.

Request for Removal of Finality

Applicant respectfully requests removal of the final nature of the present office action, which is improper in this instance. The Examiner has cited MPEP § 706.07(a), which generally prescribes when a final second action is proper. It states that:

Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner.

MPEP §706.07(a) (emphasis added). Applicant submits that the rule is specifically directed to information disclosure statements (IDS's) accompanied by a required fee (i.e., those that do not result from prior art newly discovered in a foreign counterpart application).

In this case, the rejection of claims resulted from Applicant's citation of the Mileti patent in a supplemental (IDS). However, Applicant's supplemental IDS contained the statement under 37 CFR 1.97(e) certifying that each item of information contained therein was first cited in a counterpart foreign application not more than three months prior to the filing of the supplemental IDS. 37 CFR 1.97(c) provides that, in such a case, a fee is not required, and, in fact, no fee was submitted with Applicant's IDS.

It is improper to make the present office action final. The Examiner's attention is directed to MPEP §609 (p. 600-125), which provides:

If information submitted during the period set forth in 37 CFR 1.97(c) with a statement under 37 CFR 1.97(e) is used in a new ground of rejection on unamended claims, the next Office action will not be made final since in this situation it is clear that applicant has submitted the information to the Office promptly after it has become known and the information is being submitted prior to a final determination on patentability by the Office.

MPEP §609 (p. 600-125)(emphasis added). That is precisely the case here.

The MPEP cautions against imposing a final action prematurely, as here.

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal. However, it is to the interest of the applicants as a class as well as to that of the public that prosecution of an application be confined to as few actions as is consistent with a thorough consideration of its merits.

MPEP § 706.05. The imposition of a final action is not only improper according to the MPEP, it deprives Applicant of a full and fair opportunity to respond to the rejection on the merits and/or amend the claims in order to distinguish the newly cited art.

Rejection of Claims 1, 2, 4-12, 14-16, and 18-20 under 35 U.S.C. §102(b) over Mileti

Claims 1, 2, 4-12, 14-16, and 18-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Mileti reference. The Examiner considers Mileti to disclose each of the elements of the claims, including a collapsible, substantially self-restoring portion having a pair of substantially parallel panels formed substantially of a thermoplastic material. The Examiner also considers Mileti to disclose at least one cambered portion 25, 26 in each of the panels, and other features recited in the claims.

In response, Applicant has amended independent claim 1 herein. As amended, claims 1, 2, and 4 further clarify that the panels are cambered by a bending of the panel. The amendment is supported by the specification at least in paragraph [0031] and Figure 1. This is not disclosed in Mileti or suggested by that reference. In Mileti, the panels are unbent and, instead, contain a number of interlocking, open-ended, pyramidal cells 25, 26.

Mileti's panels are intended to collapse upon their planar axis, and not to bend. See e.g., Mileti, col. 4, lines 26-51. Applicant submits that it would not be obvious to one of skill in the art to introduce a cambered bend into Mileti's panels. Rather, one of skill in the art, reviewing Mileti, would be motivated to have unbent panels. The panels in Mileti are not intended to bend. Mileti uses angle irons to prevent lateral displacement of the panels. Mileti, col. 5, lines 7-11. The panels in Mileti are also prevented from bending by diagonal cables 32. See Mileti, col. 3, lines 4-7. Further, if Mileti's panels were bent, his device would likely not function as intended, since the panels would not collapse upon their planar axis.

With respect to claims 8-12, Applicant traverses the rejection. The panels in Mileti's device do not collapsibly fold, as recited in claim 8. Rather, they are compressed along their planar axis.

With respect to claims 15-16 and 18-20, Applicant notes that independent claim 15 has been amended herein to explicitly set forth that the panel members are bent to form the cambered portion. As noted, Mileti does not bend the panels to provide a cambered portion, and such a modification would not be obvious.

Rejection of Claims 3 and 17 under 35 U.S.C. §103(a) over Mileti and McFadden

Claims 3 and 17 stands rejected for obviousness over a combination of the Mileti and McFadden patents. Applicant traverses the rejection as it might apply to the claims as amended herein. Applicant incorporates herein its arguments made above with respect to Mileti and submits that claims 3 and 17 should be allowable at least as depending from allowable base claims.

With respect to claim 17, Applicant contends further that the Examiner's proposed combination of Mileti with McFadden is improper. Mileti contains an explicit teaching against hexagonal cells and toward pyramidal cells instead. Mileti states:

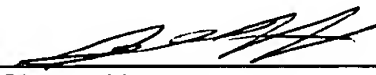
However, rather than a hexagonal prismatic cell of the true honeycomb the expanded plastic sheet has interlocking oppositely facing open-ended pyramidal cells 25 and 26, the axis of which are essentially parallel and extend normal to the opposite faces 27 of the sheets.

Mileti, col. 2, lines 54-59. One of skill in the art reading Mileti would be motivated to use pyramidal cells rather than hexagonal cells given Mileti's explicit teaching against hexagonal cells.

The Commissioner is hereby authorized to charge any fees deemed necessary for this response to **Deposit Account No. 13-0010 (TAM-1005-US)**, maintained by Madan, Mossman & Sriram. The Examiner is invited to discuss this matter with Applicant's attorneys should any questions arise.

Respectfully submitted,

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